



Democracy at Work

News and Information from Region 9



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National Labor Relations Board, Region 9

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Good to Know

The JWP Federal Building is located in downtown Cincinnati, on Main Street, between 5th and 6th streets. Visitors are required to pass through security and must show identification.

Office Hours: 8.30am to 5pm, Monday through Friday.

GREETINGS...

From the Desk of Gary W. Muffley, Regional Director

Welcome to Region 9's inaugural newsletter. We hope this quarterly publication will provide timely and useful information about the National Labor Relations Act and the operation of this Agency. Our aim is to better serve the members of the labor-management community and the general public throughout the geographic area we serve by presenting a range of articles, from basic discussions of how we perform our services to more detailed reports of the Region's recent cases and contemporaneous legal issues. I invite suggestions from readers concerning specific items of interest you may wish to see discussed.

This newsletter will also complement our ongoing efforts to provide speakers to groups who want to know more about the NLRB, the Cincinnati Regional Office, and the processing of representation petitions and unfair labor practice charges. Each year, we speak to numerous groups representing labor relation professionals, employers, labor organizations, academic institutions and civic groups. Speaking to outside groups is a very important aspect of my role as Regional Director, and is also an activity that I genuinely enjoy and look forward to.

I have served as Regional Director since April 2004 and it is my privilege to be associated with the 45 dedicated public servants who staff the Cincinnati Regional Office. We look forward to serving you.

Q: Who does the NLRA cover/protect?

A: The National Labor Relations Act covers private sector employers engaged in interstate commerce and employees of the United States Postal Service. We do not have jurisdiction over federal, state or local government employees or employers subject to the Railway Labor Act.

Q: Does the NLRA protect activity with other employees for mutual aid or protection, even if they don't currently have a union?

A: Yes. For instance, employees not represented by a union, who walked off a job together to protest working in the winter without a heater were held by the Supreme Court to have engaged in concerted activity that was protected by the NLRA.

But, there are limits to the Act's protections. The NLRA protects employees who act together to raise workplace issues. Employees are not protected by the Act when they make complaints or demands for themselves alone.

What We Do at the NLRB

The National Labor Relations Board is an independent federal agency created by Congress in 1935 to administer the **National Labor Relations Act**, the primary law governing relations between unions and employers in the private sector.

Section 7 of the National Labor Relations Act (NLRA) gives employees the right to:

- *Form, join or assist a union*
- *Choose representatives to bargain with their employer on their behalf*
- *Act together with other employees for their benefit and protection*
- *Choose not to engage in any of these protected activities.*

The Basics

The National Labor Relations Board (NLRB), charged with enforcing the NLRA, has two principal functions: 1) to determine through secret ballot elections whether employees wish to be represented by a union in dealing with their employers, called representation cases, and 2) to prevent and remedy unlawful acts by either employers or unions, called unfair labor practice cases. The Agency does not act on its own motion in either function. It processes only those representation cases or unfair labor practice charges that are filed with the NLRB in one of its 51 Regional, Subregional, or Resident Offices.

To determine what Region, Subregion or Resident Office covers your particular problem you will need to know the county where the Employer is located. Region 9 covers southern Ohio, central and eastern Kentucky, western West Virginia, and two counties in Indiana.

How to File a Representation Petition with the NLRB

Filing NLRB representation petitions can be simple and convenient but please keep in mind these helpful tips:

- Know which Regional office will handle your petition. Region 9 covers southern Ohio, central and eastern Kentucky, and western West Virginia.
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization or membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Although the majority of elections are conducted pursuant to election agreements, be prepared for a hearing by knowing three things: (1) the employer's operations; (2) the community of interests of various employee job categories; and (3) who the "supervisors" are.
- Hearings are held 10-14 days from the date of filing. Do not file a petition if you are not ready to proceed to a hearing.
- Be prepared for the election to be conducted within 42 days from the date of filing.
- Always call the assigned Board agent with questions or concerns.



The Information Officer (IO)

Each Region, Subregion or Resident office has an Information Officer (IO) who is available, during office hours, to answer questions from the public. The Information Officer can answer general questions about the NLRA/NLRB as well as specific questions you may have regarding a possible unfair labor practice or representation issue. If you have questions about a workplace problem, please call or come into the office to speak to the IO in person. Tell us your story and we will tell you whether your situation falls under the NLRB's jurisdiction. If it doesn't we may be able to refer you to another agency that can help. If it does, the IO can also assist you in the filing of an unfair labor practice charge or a representational petition. If you decide to file please be sure to have the contact information (name, address, phone/fax numbers, etc.) for the Employer and the Union on hand for the IO.

Visit Us Online

An Introduction to the NLRB Website

The screenshot shows the NLRB website interface. At the top, there is a search bar and navigation links. The main content area features a large image of the NLRB seal and a section titled "What We Do" which describes the board's mission. To the right, a sidebar lists recent news items and provides a "My NLRB" section with a login form. Below the main content, there are two columns of links: "I am new to this Website" and "I am a labor professional". The footer contains the USA.gov logo and various accessibility and language options.

How to File an Unfair Labor Practice Charge

Anyone may file an unfair labor practice charge with the NLRB. Here are some helpful tips:

- Completed charge forms identify the parties, give a brief basis for the charge and are signed by the charging party.
- Forms are available for download from the NLRB website or can be obtained from any NLRB office. Information Officers can help in drafting charges.
- Section 10(b) of the Act requires that the charge be filed and served on the charged party within 6 months of the alleged unfair labor practice.

When a Charge is Filed

The NLRB Regional Office will assign a Board agent to investigate. The charging party is responsible for promptly presenting evidence (usually a sworn statement and documents of key events) in support of the charge.

The Region will ask the charged party to present a response to the charge, and will attempt to secure neutral witnesses and/or documents in order to establish all pertinent facts.

After a full investigation, the Region will determine whether or not the charge has merit.

In addition to the Information Officer, the NLRB has developed an extensive and user-friendly website (<http://www.nlr.gov>) that can give you further information about filing charges and petitions, along with links to great resources including:

- **Casehandling Manuals:** a great place to begin any research project as they contain the Board's policies and procedures for unfair labor practice, representation, and compliance cases.
- **Rules and Regulations:** provide the procedural guidelines for the Board's processes, including various deadlines and how different documents may be submitted and served on other parties, including which documents may be filed or served by fax.
- **Decisions by the Board, ALJs, and Regional Directors:** the most recent legal precedents and how they are being applied. Several options for conducting legal research.
- **General Counsel Memos:** the GC's stance on novel issues and legal issues of particular interest dating back to 1973. Find insight into what the GC looks for in a quality investigation – for example, see GC 08-06 which includes checklists for investigation of different types of ULP allegations.
- **Operations Management Memos:** updates to the Agency's policies in memos dating back to 1985 – for example, see OM 08-54, Grosvenor Orlando Associates, LTD, which describes a discriminatee's obligation to search for work after a discharge.
- **Advice Memos:** information on the General Counsel's position on issues for which there is not clear legal precedent.

The NLRB's website was recognized as one of the five best in the Federal Government by the National Security Archive (NSA), a nongovernmental research institute and library located at George Washington University. The NSA audited 158 agency websites to determine compliance with the 1996 Congressional amendment to the Freedom of Information Act (FOIA) that required agencies to put more public information on their websites. The NSA rated the NLRB website as an "E-STAR" stating that the site was "well organized and easy to follow," that it had an "excellent navigation scheme" and that there was an "electronic reading room with a lot of available information."



NLRB Encourages E-Filing

"E-gov" is the mandate to federal agencies to establish procedures for Internet-based access to government services. There is a link to E-gov on our website. From there, you can establish your own personal account with us to access Regional and Board case information and submit documents to us electronically, called "e-filing." We encourage parties to submit acceptable documents to us electronically. And for those e-filers who establish their own accounts, the e-filing system will automatically

After the Region Makes a Determination

If the Region determines that a charge *has no merit*—that the charged party has not violated the Act—it will permit the charging party to withdraw the charge, or the charge will be dismissed. The charging party has the right to appeal a dismissal. If the Region determines that a charge *has merit*—that the charged party has violated the Act—it will attempt to settle the case. Unless there is a settlement, the Region will proceed to trial to obtain a finding of a violation and an order directing the charged party to undertake remedial actions. The charged party has appeal rights, with a final decision subject to appeal to a federal court.

Remedies

When there has been a violation, the Act does not impose fines or other direct penalties. Rather, it requires remedial action to correct the violation and its effects.

NLRB remedies require those who have violated the Act to cease the violation, to inform employees that they will respect their rights, to reinstate employees who have been unlawfully fired, and to pay compensation for lost earnings.

Immediate Work Search Essential

Discriminatees should begin their search for work within two weeks of their discharge refusal to hire; back pay will begin only after the search for work begins. *Grosvenor Resort*, 350 NLRB 1197 (2007).

fill in data fields on e-file forms through the use of new portal technology, while the expanded e-filing program will allow users to file documents electronically with the field offices, as well as the Division of Judges, General Counsel's Office of Appeals, and the Board's Executive Secretary's Office.

Although *petitions, charges and voluntary recognition notifications cannot yet be filed electronically*, most other documents can—making e-filing the easy way to do business. The list of approved documents can be found on the Agency's website under the E-Gov tab, E-Filing option in the pull-down menu. Additional information can also be found in OM 09-34, on the Agency's website.

Since all documents submitted in a case will eventually be scanned and stored electronically, receiving documents in an electronic form will save considerable Agency resources. In an effort to encourage parties to consider e-filing documents, the Board, in a press release dated February 19, 2009, announced three changes to its e-filing program designed to simplify and promote electronic filings:

1. The Board and the General Counsel will now accept electronic filings up to 11:59 p.m. local time at the receiving office on the due date. *Documents filed by other means, such as U.S. mail, personal service or facsimile, will continue to be due at the close of business at the receiving office on the due date. The close of business in Region 9 and for the General Counsel and the Board offices in Washington, D.C. is 5:00 p.m., Eastern Time.*
2. The Board and the General Counsel will now require parties who e-file documents to serve the documents on other parties to the case by e-mail whenever possible.
3. The Board and the General Counsel will no longer require parties to provide physical copies of long documents that they file electronically. *In addition, the 15-page limit for E-Filings has been eliminated. E-filed documents can now be as large as 20 megabytes.*

And finally, the Agency also revised the manner in which decisions are distributed to the parties. In April 2009, the Agency began issuing Administrative Law Judge Decisions electronically to registered parties. Registration can be accomplished on the Board's website under the E-Gov tab. Further enhancements to the service of Board documents, and to the Agency's E-filing program are envisioned for the future.

Speakers Available!

Members of the Region's staff are available to make presentations before any unions, employer organizations, social service organizations, high school or college classes and others to describe the Act's protections, how the Region investigates and decides unfair labor practice cases and processes representation petitions, and other NLRB topics of interest.

If you are interested in having a member of the staff speak to your group, please contact Assistant to the Regional Director Laura Atkinson by e-mail at laura.atkinson@nlrb.gov or call her at 513-684-3625.

Comments or Questions

In addition to the topics we may choose to feature, we would like to invite your comments and suggestions concerning specific items of interest, regional policies, practices or procedures that you would like to see discussed, or whether you would prefer a Spanish version, an electronic format or to be deleted from our mailing list altogether. We can make it happen and your comments would be greatly appreciated. Please contact Deputy Regional Attorney Deborah Jacobson at deborah.jacobson@nlrb.gov or by phone at 513-684-3651.

Speaking of Technology!

In 2008, the Board authorized the General Counsel to implement a video testimony pilot program aimed at enhancing the Agency's ability to process representation cases more efficiently. Since then, Regions have used video conference equipment in pre and post-election hearings to take oral testimony of witnesses not able to appear in person at a hearing. Recently, NLRB Operations issued a memo highlighting this practice for representation cases and suggested its use in unfair labor practice investigations to secure evidence where a face to face affidavit is not required. A survey of Regions utilizing this equipment noted that many of the stakeholders, the public we serve, were not aware of the availability of video conference equipment. We are taking this opportunity to notify you of our video testimony program. We encourage our stakeholders to suggest the use of this technology in appropriate representation and unfair labor practice case proceedings.

White House Announces Three NLRB Nominations



Late in the day on July 9, 2009, the White House announced that it had sent to the Senate the nominations of Craig Becker, Mark Gaston Pearce, and Brian Hayes to be members of the National Labor Relations Board. If confirmed by the Senate, the Board would have a full complement of five members for the first time since December 16, 2007. The sitting members are Chairman Wilma B. Liebman and Member Peter C. Schaumber.

Mr. Hayes currently serves as the Republican Labor Policy Director for the U.S. Senate Committee on Health, Education, Labor and Pensions (HELP). Mr. Hayes's term would expire on December 16, 2012. Mr. Pearce, in private practice with a Buffalo, NY law firm, would have a term ending August 27, 2013. Mr. Becker, Associate General Counsel of the Service Employees International Union and the AFL-CIO, would have a term ending December 16, 2014. Chairman Liebman's term expires on August 27, 2011, and Member Schaumber's term ends August 27, 2010. By tradition, three of the five Board seats are filled by individuals of the same political party as the President in office.

As this newsletter went to press, the Associated Press reported that the Senate Health, Education, Labor and Pensions Committee planned to vote on the Board nominations in late October. Perhaps a full Board complement will be in place by the time you receive this!

What is a 10(j) Injunction?

Section 10(j) of the Act authorizes the Board to seek injunctive relief in a U.S. District Court in those situations where the normal processes of the Board likely will be inadequate to effectively remedy the alleged violations of the Act. The section was added to the Act in 1947 as part of the Taft-Harley amendments. Congress created Section 10(j) as a means to preserve or restore the lawful status so that the purposes of the Act are not frustrated.

Injunctive relief may be sought as soon as an unfair labor practice complaint has been issued by the General Counsel and remains in effect until the case is finally disposed of by the Board. It may be requested by the charging party or sought by a Regional Office. When a Region concludes that a case is appropriate for injunctive relief, it submits a recommendation to the General Counsel in Washington D.C. If the General Counsel agrees, the case is forwarded to the Board. If the Board authorizes the General Counsel to seek injunctive relief, the Region files a petition in the appropriate U.S. District Court. Approximately 75 to 100 recommendations for injunctive relief are submitted by the Regions to the General Counsel each year. The most common cases where injunctive relief is sought include those involving discharges during union organizing campaigns, tainted withdrawals of recognition from unions, and successor employers' refusals to recognize incumbent unions.

Case in Point: Massey

Region 9 recently sought and received injunctive relief in a case involving Massey Energy Company. In that case, Massey purchased a coal mine where the miners had been unionized. Massey failed, however, to hire 85 unionized miners despite the fact that most of them had worked at the mine for years. The Regional Director decided to issue complaint against Massey and a 16 day hearing was held before an administrative law judge, who issued a decision finding that Massey's actions in refusing to hire the unionized miners were illegal. The judge ordered Massey to offer jobs to the miners and recognize and bargain with the Union. Massey, however, filed exceptions to the judge's order with the Board. At that time, the Regional Director decided that this was an appropriate situation to seek Section 10(j) injunctive relief.

There were several reasons for the Regional Director's decision. Many of the miners were men in their 50s and 60s who might have retired by the time a Board order issued requiring Massey to return the miners to work. Some of the miners were moving away to find new work and may have been gone by the time the Board order issued. Also, the employees who were hired by Massey would be working without a union while the matter was pending before the Board and may have been afraid to exercise their rights under the Act. The Region sent a request for authorization to seek injunctive relief and the request was granted.

The Region filed a petition in federal district court for an injunction requiring Massey to offer jobs to the unionized miners and to recognize and bargain with their union. The district court judge ordered that a hearing be held. Witnesses, including the local union president and some of the coal miners who were rejected by Massey, testified at the hearing. After the hearing, the district court granted an injunction requiring Massey to offer jobs to the 85 miners, but not to recognize and bargain with their union. The court agreed with the Board that the miners were in danger of suffering irreparable harm while they waited for the Board's processes. The court did not, however, believe that ordering Massey to recognize and bargain with the union was necessary to make the ultimate Board order meaningful. In other words, the court granted what it believed to be the minimum amount of injunctive relief necessary to preserve the effectiveness of a Board order when one ultimately issues. The Board recently issued a decision and order in this case. For more information on *Massey*, please consult the following:

The ALJ's decision: *Massey Energy Co.*, 2007 WL 4179503 (ALJ November 21, 2007). The Board's decision: *Massey Energy Co.*, 354 NLRB No. 83 (September 30, 2009).

The decision granting 10(j): *Muffley v. Massey Energy Co., et. al.*, 2008 WL 4103881, unreported (S.D. West Virginia August 29, 2008), aff'd. 570 F.3d 534 (4th Cir. 2009).

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All of the Regional NLRB newsletters are in electronic form on the NLRB website. To access them, please go to <http://www.nlr.gov>, click on the "About Us" tab, and then scroll down to Regional News and click on newsletters.

ESTAMOS A SU SERVICIO

Para asistencia de someter una carga o petición
Llame la oficial de información en oficina regional a
(513) 684-3686.

La oficial de información discutirá su situación y le ayudará si desee
Someter una carga o petición. Información esta dispuesta a usted mientras
las horas de servicio - lunes a viernes, 8:30 a.m. to 5:00 p.m, o 24/7/365

www.nlr.gov

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WE ARE AT YOUR SERVICE

For assistance in filing a charge or a petition,

Call the Regional Office at

(513) 684-3686 and ask for the information officer.

The information officer will discuss the situation and
assist you in filling out a charge or petition. Information is available
during office hours, Monday through Friday, 8:30 a.m. to 5:00 p.m. or
24/7/365 at

www.nlr.gov

